

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VALLOUREC TUBOS DO BRASIL S.A. '

V. '

CA NO. 4:16-cv-03698

PDVSA SERVICES, INC. '

and BARIVEN, S.A. '

**PLAINTIFFS' VALLOUREC TUBOS DO BRASIL S.A. MOTION FOR
FINAL DEFAULT JUDGMENT AND MEMORANDUM IN SUPPORT
THEREOF**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Rule 55 of the Federal Rules of Civil Procedure Plaintiff, VALLOUREC TUBOS DO BRASIL S.A, through its attorneys, Caldwell Fletcher, PC, files this their Motion for Final Default Judgment as to Liability and Damages against Defendants BARIVEN S.A. and, in support thereof, would respectfully show the Court the following:

A. Introduction

1. Plaintiffs are VALLOUREC TUBOS DO BRASIL S.A. (“VALLOUREC”). VALLOUREC is A MANUFACTURER OF oil and gas tubing which was sold to Defendant through its agent PDVSA, Inc. Non-Answering Defendants are BARIVEN S.A., the national oil company of Venezuela.

2. On or about Dec. 20, 2016, Plaintiff filed an Original Complaint against Defendants for, among other things, damages for breach of an order of pipe which was delivered but not paid by BARIVEN, S.A. A copy of the Original Complaint is on file herein and incorporated by reference. [Doc. 1]. Defendant PDVSA SERVICES, INC. was dismissed by the Court on its Motion to Dismiss on June 21, 2017. [Doc. 21].

3. On or about July 23, 2018, proof of service under the Hague Convention was filed with the Court with this Motion (Exh. A) as to Defendant BARIVEN S.A., and BARIVEN S.A. did not file a responsive pleading or otherwise defend the suit.

4. Plaintiff now asks the Court to render a final default judgment against Defendant BARIVEN S.A., provides evidence of liquidated damages and attorney’s fees as pled.

B. Facts

5. Defendants entered into written agreement with Plaintiffs to buy pipe for BARIVEN, S.A. from Plaintiffs. [Doc. 1-1]; *see also* Exhibit A.

6. Plaintiffs VALLOUREC gave notice of breach and placed the Defendants on notice of their liability for damages and attorneys' fees. *See* Exhibit B, affidavit of Caldwell Fletcher.

7. The Plaintiff has been damaged by its customer BARIVEN S.A.'s non-payment for the pipe in question (due under the agreement at Doc 1-1) in the amount of \$1,700,035.43 which was delivered and accepted by Defendants and has incurred, in the prosecution of this matter, reasonable attorney's fees in the total amount of NINETEEN THOUSAND FOUR HUNDRED NINETY SEVEN AND 50/100 DOLLARS (\$19,497.50). *Id.*

8. The Plaintiff would show that the Hague Convention, and the underlying treaty at Article 15 (Exhibit "C"), anticipates that a Court may grant default if, within six months of service, the Defendant has not answered. Authority supports the granting of the relief sought here:

Articles 15 and 16 of the Hague Convention limit the circumstances in which a default judgment may be entered against a defendant who had to be served abroad and did not appear, and provide some means for relief from such a judgment. *Volkswagenwerk*, 486 U.S. at 699; *see* 20 U.S.T. 361, arts. 15, 16.

Vitro Packaging De Mex., S.A. de C.V. v. Dubiel, 2017 Tex. App. LEXIS 11575,

11578 (Tex. App.—Dallas, 2017).

9. Plaintiffs have had to employ Caldwell Fletcher, PC to recover damages owed by Defendants. *See* Exhibit “B” affidavit of Caldwell Fletcher.

C. Argument

10. The court may render a default judgment against a party who has not filed a responsive pleading or otherwise defended the suit. *See* Fed. R. Civ. P. 55(a), (b)(2); *United States v. \$23,000 in U.S. Currency*, 356 F.3d at 163-64.

11. The Court should enter a final default judgment against BARIVEN S.A., because Defendant did not file a responsive pleading within 6 months of service on the Central Authority as provided in the treaty under the Hague Convention (Exhibit “A”) (Exhibit “C”).

12. The Plaintiffs’ counsel has attached a certificate of last known address (Exhibit “D”) and a proposed Default Judgment (Exhibit “E”).

13. The Defendant BARIVEN, S.A. are not in the military or otherwise legally infirm. Exhibit “F”.

14. The Plaintiff attaches proof of costs paid for Hague Convention service in this matter so that it may be included in court costs expended by Plaintiff . (Exhibit “G”).

D. Conclusion

For these reasons, Plaintiff, VALLOUREC TUBOS DO BRASIL S.A. asks the Court to enter a Final Judgment of Default against Non-Answering Defendants on liability, for assessment of damages based on the evidence, for attorney's fees as pled and proved, and for all such other and further relief, at law and/or in equity to which it may show itself justly entitled.

Respectfully submitted,

CALDWELL FLETCHER, PC
By: /s/ CaldwellFletcher
Caldwell Fletcher
Texas SBN: 07141710
Federal ID No. 9654
3401 Allen Parkway, Suite 100
Houston, Texas 77019
Phone: (713) 284-1624
Fax: (713) 583-9883
caldwell@caldwellfletcherpc.com

**ATTORNEYS FOR PLAINTIFFS
VALLOUREC TUBOS DO BRASIL S.A.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this instrument has been forward to all known parties of record as indicated below, in accordance with the Federal Rules of Civil Procedure on this 23nd day of July, 2018.

Mr. Brock Akers
The Akers Firm PLLC
The Clocktower Building
3401 Allen Parkway, Ste. 101
Houston, Texas 77019

Via Telefax No. (713) 583-8662

 /s/ Caldwell Fletcher
Caldwell Fletcher